REPORT OF INVESTIGATION:

General James F. Amos
United States Marine Corps

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MEMORANDUM FOR THE INSPECTOR GENERAL.

SUBJECT: Report of Investigation – General James F. Amos, United States Marine Corps  
(Case Number 20130320-013314)

We recently completed an investigation into an allegation that General (Gen)  
James F. Amos, while serving as Commandant, United States Marine Corps (USMC), afforded  
preferential treatment to a subordinate officer, by removing the officer from legal hold so he  
could be promoted to lieutenant colonel. The subordinate officer is the son of Gen (Retired)  
James T. Conway, USMC, the former Commandant.

We did not substantiate the allegation.

Gen Conway’s son was the Executive Officer (XO) of the 3rd Battalion, 2nd Marine  
Regiment, 2nd Marine Division (3/2) at the time several 3/2 Marines urinated on the corpses of  
deceased insurgents following combat operations in Afghanistan. A Marine videotaped the  
urination. Someone later posted the video to YouTube.

We found that immediately after publication of the urination video and identification of the  
perpetrators, Gen Amos directed that all 3/2 Marines remain on hold until an appointed  
Consolidated Disposition Authority (CDA) made a determination regarding culpability. We also  
found that Gen Amos’ hold directive covered all 3/2 personnel moves, promotions, awards, and  
departures from the USMC. We further found Gen Amos told Lieutenant General (LtGen)  
John M. Paxton, Jr., Commanding General, II Marine Expeditionary Force (II MEF), that he (LtGen Paxton) could not remove any 3/2 Marines from hold until he provided Gen Amos with a  
written memorandum recommending removal from hold and obtained Gen Amos’ approval.

We found that no one took any action to initiate the formal legal hold process required  
governing regulations to delay the XO’s promotion to lieutenant colonel. We further found that  
the XO never was on formal legal hold, and that the USMC did not place any 3/2 officer on  
formal legal hold before June 1, 2012, which was the effective date of the XO’s authorized  
promotion to lieutenant colonel.

We found that on the evening of May 31, 2012, LtGen Paxton delivered a memorandum  
to Gen Amos recommending removal of the hold on the XO (and on another subordinate  
officer), and continuation of holds on several other 3/2 officers and senior noncommissioned  
officers. We found that on June 1, 2012, Gen Amos approved LtGen Paxton’s recommendation  
to remove the XO and another officer from hold. The XO was promoted effective June 1, 2012.

We evaluated our findings against Federal statute, the Joint Ethics Regulations, and  
Naval and USMC regulations governing preferential treatment and the promotion of Marine  
officers. We determined Gen Amos’ decision to approve LtGen Paxton’s recommendation  
regarding removal of the XO from hold was reasonable. We also determined that given the
absence of any formal action by the Secretary of the Navy to delay the XO’s promotion to lieutenant colonel before June 1, 2012, his promotion was effective on June 1, 2012. Finally, we determined Gen Amos did not approve LtGen Paxton’s recommendation to release the XO from hold because of any relationship Gen Amos may have had with Gen Conway.

We make no recommendation regarding Gen Amos in this matter.

During our investigation, we obtained evidence that the USMC may have improperly delayed the promotion of the 3/2 battalion commander to colonel, by failing to submit a request for promotion delay to the Secretary of the Navy before the effective date of the promotion. We discuss this in detail in the report of investigation. We recommend that the Secretary of the Navy review the action taken by the USMC to delay the officer’s promotion.

Marguerite C. Garrison
Deputy Inspector General
Administrative Investigations

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I. INTRODUCTION AND SUMMARY

We initiated this investigation to address an allegation that General (Gen) James F. Amos, Commandant, U.S. Marine Corps (USMC), afforded preferential treatment to a subordinate officer, Major (Maj) James B. Conway, by removing Maj Conway from legal hold so the USMC could promote Maj Conway to lieutenant colonel (LtCol). Maj Conway is the son of the previous Commandant, Gen James T. Conway, Retired.¹

We did not substantiate the allegation. Maj Conway was the Executive Officer (XO) of 3rd Battalion, 2nd Marine Regiment, 2nd Marine Division (3/2). The 3/2 deployed to Helmand Province, Afghanistan, as part of the II Marine Expeditionary Force (II MEF). In July 2011, a member of a scout sniper team attached to K Company, 3/2, filmed several Marines urinating on the bodies of dead enemy combatants following a combat engagement in Afghanistan. In January 2012, someone uploaded the video to YouTube, a social networking site on the Internet. Upon learning of the video, Gen Amos directed that all 3/2 Marines, approximately 900 Marines, be placed on hold pending investigation of the issues surrounding the video. Gen Amos told the II MEF Commanding General (CG) that the “hold” would remain in place for all of the 3/2 Marines until Gen Amos received and approved written recommendations to release them from hold. On May 31, 2012, Gen Amos approved the release from hold for Maj Conway after receiving written recommendations from the II MEF Commander relating to the 3/2 Marines, including Maj Conway. Effective June 1, 2012, the USMC promoted Maj Conway to LtCol.

We found that Gen Amos released Maj Conway from a hold status after receiving and approving written recommendations made by the II MEF CG. We conclude that Gen Amos did not afford preferential treatment to Maj Conway.

This report sets forth our findings and conclusions based upon a preponderance of the evidence.

II. BACKGROUND

On October 22, 2010, Gen Amos succeeded Gen Conway as Commandant, USMC (CMC). The duties of the CMC include oversight of the USMC promotion process. Although the ultimate promotion authority is the Secretary of the Navy (SECNAV), the Commandant makes promotion recommendations, including recommendations to delay a promotion.

¹The incoming complaint contained several additional allegations. Based on our initial fieldwork we determined those allegations did not merit further investigation. We discuss each additional allegation in Section III of this report.
On January 11, 2012, a video appeared on YouTube of Marines from a scout sniper team attached to the 3/2 urinating on the bodies of several dead enemy combatants killed during combat operations in Helmand province, Afghanistan. The video garnered worldwide attention, along with media and political interest. A member of the scout sniper team made the video on July 27, 2011. At the time of the combat operations and the video, Maj Conway was the 3/2 XO.

III. SCOPE

We investigated whether Gen Amos afforded preferential treatment to Maj Conway. We interviewed the complainant, 10 witnesses, and Gen Amos. We reviewed information provided by the complainant, the command investigation into the 3/2 urination incident, and additional documents provided by the witnesses. We also reviewed over 7,000 email messages and documents retrieved from Gen Amos' unclassified user account and other email accounts.

The incoming complaint included other allegations against Gen Amos. Based on the evidence we obtained during our initial fieldwork, we determined further investigation was not warranted for the reasons set forth below.

Unlawful Command Influence (UCI)

The complaint alleged that Gen Amos engaged in UCI in disciplinary proceedings facing the Marines involved in the urination incident. Given that the UCI allegations are subject to the jurisdiction and authority of military courts-martial and the appellate courts, we determined that further DoDIG investigation was not appropriate.

Over Classification of Command Investigation

The complaint alleged Gen Amos improperly directed the classification of the command investigation into the urination incident. Originally, a USMC Original Classification Authority (OCA) classified the command investigation. Subsequently, a different OCA declassified the command investigation with minor exceptions. The Under Secretary of Defense for Intelligence (USD (I)) is designated as the review authority for allegations regarding over classification. The complainant submitted a complaint through the Department of the Navy to the USD (I) after his initial complaint to DoDIG. Given that USD (I) is the appropriate senior agency official to address the classification issue, we determined that further investigation was not warranted.

2 Several witnesses referred to the incident as the "urination incident." We adopt this term as a reference in the report where appropriate or required for context.
IV. FINDINGS AND ANALYSIS

Did Gen Amos afford a subordinate officer preferential treatment?

Standards

DoD 5500.07-R, “Joint Ethics Regulation (JER),” dated August 30, 1993, including changes 1-7 (November 17, 2011)


Subpart A, “General Provisions,” Section 2635.101, “Basic obligation of public service,” states that public service is a public trust. Section 2635.101(b) (8) states employees shall act impartially and not give preferential treatment to any private organization or individual.

Chapter 12, Section 12-401e, states that open-mindedness and impartiality are important aspects of fairness. DoD employees must be committed to justice in the performance of their official duties. Decisions must not be arbitrary, capricious, or biased. DoD employees must treat individuals equally and with tolerance.

U. S. Navy Regulations (1990), Chapter 11, “General Regulations”

Paragraph 1165, “Fraternization prohibited,” prohibits personal relationships between officer members that are unduly familiar and that do not respect differences in grade or rank and which result in actual or apparent preferential treatment or call into question a senior officer’s objectivity.

Marine Corps Manual with Changes 1-3 (March 21, 1980)

Professional and personal relationships between Marines of different grades will be consistent with traditional standards of good order and discipline and the mutual respect that has always existed between Marines of senior grade and those of lesser grade. Prejudice to good order and discipline or discredit to the Marine Corps may result from any circumstance that calls into question a senior’s objectivity, results in actual or apparent preferential treatment, undermines the authority of the senior, or compromises the chain of command.

Facts

The complaint alleged Gen Amos afforded preferential treatment to Maj Conway by removing Maj Conway from legal hold so the USMC could promote Maj Conway to lieutenant
The alleged preferential treatment occurred in the context of administrative and criminal investigations into alleged misconduct by the Marines involved in the urination incident. We have categorized the relevant facts according to the USMC leadership's response to the posting of the urination video, the hold processes affecting the 3/2 Marines, and specific events relating to the promotion of Maj Conway. We describe the various events and matters chronologically below.

**USMC Leadership's Response to the Urination Incident**

On January 11, 2012, after the video of the urination incident appeared on YouTube, the Naval Criminal Investigative Service (NCIS) initiated an investigation and identified the Marines in the video. Shortly thereafter, NCIS identified the Marine who made the video. Each Marine was a member of the scout sniper team attached to K Company, 3/2.

On January 13, 2012, Gen Amos appointed Lieutenant General (LtGen) Thomas Waldhauser, Commanding General (CG), Marine Corps Forces Central Command, to serve as the Consolidated Disposition Authority (CDA) concerning the urination incident. LtGen Waldhauser immediately appointed LtGen Steven A. Hummer, Commander, U.S. Marine Forces Reserve, to investigate the urination incident. On February 10, 2012, Gen Amos removed LtGen Waldhauser as the CDA and appointed LtGen Richard P. Mills, Deputy Commandant for Combat Development and Integration, and Commander, U.S. Marine Corps Combat Development Command, as CDA.

In early January 2012, shortly after NCIS initiated its criminal investigation into the urination incident, Gen Amos directed that LtGen John M. Paxton, Jr., the II MEF CG, place all 3/2 Marines on hold pending the CDA’s determinations regarding the culpability of any Marines connected to the urination incident. Gen Amos testified he directed that the 3/2 Marines be

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3 The "legal hold" process is governed by Naval and Marine Corps regulations. Initiation of the formal legal hold process against a Marine triggers various administrative process rights. Most witnesses, including the subject, used the terms "freeze" or "hold" to describe what occurred immediately after the urination incident appeared on YouTube. The USMC did not place any Marines on formal legal hold immediately after the urination incident appeared on YouTube. We use the term "hold" in this report to describe the actions taken immediately after the urination incident appeared on YouTube, and not the formal legal hold processes governed by the applicable regulations.

4 The Naval Criminal Investigative Service (NCIS) initiated a criminal investigation into alleged violations of the Law of Armed Conflict by the Marines involved in the urination incident. NCIS determined that there were no grave breaches of the Law of Armed Conflict. A separate command-directed investigation was initiated to focus on command and individual responsibility with respect to the urination incident.

5 The appointment of a Consolidated Disposition Authority (CDA) is a mechanism to place all necessary administrative and disciplinary action authority under a single senior military officer. The CDA serves as a general court-martial convening authority.

6 Documentary evidence and testimony established that General (Gen) Amos replaced the CDA due to potential unlawful command influence (UCI) issues.

7 On December 15, 2012, the USMC promoted Lieutenant General (LtGen) Paxton to the rank of General, and he assumed duties as Assistant Commandant, United States Marine Corps. We refer to him throughout this report as LtGen Paxton.
placed on hold to ensure that all personnel moves, promotions, and awards remained on hold until he directed otherwise. Gen Amos’ direction to hold all 3/2 Marines in place affected the entire battalion, approximately 900 Marines, not just the Marines directly involved in the sniper team operation.

Gen Amos’ direction to LtGen Paxton included the requirement that the hold remain in place until LtGen Paxton provided written and comprehensive recommendations to Gen Amos regarding all 3/2 Marines. Gen Amos explained this requirement as follows:

I said, “You’re going to have to certify this, and you’re going to have to do it in writing before I let anybody go.” So, I passed the execution of that process down, and I said, “Okay, you verify then, before I let anybody go, or I promote anybody, or we pin a medal on anybody’s chest, that they didn’t have any part of it [the urination incident], that they didn’t know about it, and that they should – it’s unreasonable to think that they should have known about it. And you meet those three criteria and then you come to me with what you’ve got.”

**Formal Process for Delay of Officer Promotions**

Federal law governs the military officer promotion process. The appropriate official may delay an officer’s promotion if an investigation is ongoing to determine whether disciplinary action is appropriate. The appropriate authority may also delay a promotion in any case in which there is cause to believe the officer has not met the requirement for exemplary conduct set forth in federal law, or is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which the officer was selected for promotion.

The USMC has a formal process to delay an officer’s promotion that normally starts with placing the officer on “legal hold.” The formal legal hold process begins when Headquarters, USMC, or an officer’s command, reports an allegation of officer misconduct to the USMC Judge Advocate Division, Military Justice Branch (JAM). JAM places the officer’s name and the substance of the allegation into the Officer Discipline Notebook (ODN), a document used to track alleged officer misconduct. JAM then reports the ODN entry to the Manpower Management Division Promotion Branch (MMPR). MMPR records the information in a USMC database, the Marine Corps Total Force System (MCTFS). The MCTFS entry formalizes the officer’s legal hold status to ensure that no favorable personnel action occurs with respect to the concerned officer.

Legal hold begins the process by which delay of an officer’s promotion may be effected. Under applicable Statute and regulations, SECNAV has the authority to delay a USMC officer’s promotion after the U.S. Senate approves a promotion. CMC does not have such authority.

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8 Title 10 United States Code, Section 624, “Promotions: how made,” prescribes conditions under which the promotion of an officer may be delayed.
Further, a promotion delay is not authorized absent written notice to the officer of the grounds for the delay before the effective date of the promotion.\(^9\)

If an officer is listed on the ODN when a Marine Administrative Message (MARADMIN) provides a promotion date for the officer, JAM must evaluate whether the facts warrant a promotion delay.\(^10\) If such a delay is warranted, JAM prepares the appropriate action on behalf of and for approval by SECNAV. A USMC officer whose promotion has been delayed has the right to submit a statement to SECNAV in response to the action taken, and SECNAV is required by Statute to give any such statement careful consideration.

### Hold on 3/2 Marines

Gen Amos appointed LtGen Mills as the CDA and gave him the authority “to take any appropriate administrative or disciplinary action.” LtGen Mills exercised his authority with counsel and guidance from his Staff Judge Advocate (SJA). LtGen Mills and his SJA were assigned to Headquarters, MCCDC, in Quantico, Virginia. The 3/2 Marines were stationed at Camp Lejeune, North Carolina, and were under the command of the CG, 2nd Marine Division (2nd MARDIV), and LtGen Paxton, the II MEF CG.

Despite his broad authority as CDA, LtGen Mills and his SJA focused exclusively on military justice matters regarding the urination incident. They believed that the CDA’s responsibilities started and ended with the disciplinary and court-martial proceedings for the Marines involved. Documentary evidence and witness testimony established that LtGen Mills deferred to LtGen Paxton to take administrative action with respect to promotions, reassignments, awards, and other personnel matters affecting the 3/2 Marines. LtGen Paxton testified that Gen Amos’ hold for the 3/2 Marines, as well as his requirement for a written recommendation before approving the removal of any 3/2 Marine from hold, presented significant issues given the number of Marines in the battalion.

#### February – April 2012

LtGen Paxton testified that beginning in February 2012, he sought consensus with the CDA and LtGen Hummer about which 3/2 Marines needed to remain on a hold status and which 3/2 Marines he could release from hold for promotion, transfers, and awards. LtGen Paxton began his efforts to obtain such consensus shortly after LtGen Hummer completed his command-directed investigation.\(^11\) For example, on April 1, 2012, LtGen Paxton emailed the CDA, LtGen Mills, concerning the hold matter affecting the 3/2 Marines and wrote:

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\(^9\) The Statute provides that if delivery of a written delay notice is impracticable before the effective promotion date, the appropriate authority must deliver such notice to the officer as soon as is practicable.

\(^10\) A Marine Administrative Message (MARADMIN) is usually published toward the end of each month and announces the promotions authorized for the first day of the following month.

\(^11\) On March 9, 2012, LtGen Hummer completed his investigation.
Can I call you at [your] convenience tomorrow? I owe CMC an update on 3/2 sometime soon. He was concerned 3 weeks ago when he heard former CO had PCSO [permanent change of station orders] to TLS [top level school]. He was subsequently clear and pointed to me about freezing “all” PCS, EAS, promotions and awards until Steve [LtGen Hummer] was finished and you had made some decisions.

May 2012

As the military justice process involving the 3/2 Marines began to take shape following the conclusion of the command-directed and NCIS investigations, II MEF personnel, including the II MEF SJA, sought clarification from the CDA’s SJA about whether II MEF could remove specific Marines from their hold status. On at least three occasions, May 9, 2012, May 25, 2012, and May 31, 2012, the CDA’s SJA responded to II MEF inquiries about Maj Conway’s hold status. In each instance, the CDA’s SJA responded that the CDA did not contemplate taking any action against Maj Conway.

The USMC held an Executive Offsite (EOS) conference on May 7-10, 2012. On May 10, 2012, LtGen Paxton met privately with Gen Amos and LtGen Mills to discuss the 3/2 matter. LtGen Paxton testified he sought resolution of Gen Amos’ hold directive at the meeting. LtGen Mills testified he told Gen Amos and LtGen Paxton that he (LtGen Mills) intended to take adverse action against nine Marines, all of whom participated in the July 27, 2011, mission. The nine Marines included seven enlisted Marines and noncommissioned officers and two officers: the Kilo Company XO and another company-grade officer. LtGen Mills added that other than the nine Marines he referenced in the discussion, he had no interest in holding any other Marines from 3/2. LtGen Paxton and Gen Amos each testified that Gen Amos reaffirmed his directive that LtGen Paxton provide a written recommendation before he (Gen Amos) would approve the release of any 3/2 Marine from hold.

In a May 25, 2012, MARADMIN, the USMC authorized Maj Conway’s promotion to lieutenant colonel effective Friday, June 1, 2012. The Executive Offsite is a biannual meeting of three-and four-star USMC general officers. The only civilian who attends this meeting is the Counsel for the Commandant.

The USMC referred a tenth suspect, a Navy Corpsman, to the Navy for action.

In a December 22, 2010, MARADMIN, the USMC announced that the FY12 USMC Lieutenant Colonel Selection Board selected Major (Maj) Conway for promotion to lieutenant colonel.
Thursday, May 31, 2012

Morning

At 8:26 a.m., on Thursday, May 31, 2012, a 2nd MAR DIV staff officer emailed the Division Commander, Maj Gen John Toolan concerning Maj Conway’s June 1, 2012, promotion to lieutenant colonel. He wrote

You may already know this, but since I found out about it this morning as a change from what was expected yesterday, I wanted to make sure you were aware that Gen and Mrs. Conway will be here tomorrow morning for Brandon Conway’s promotion.

At 9:36 a.m., May 31, 2012, the II MEF Chief of Staff (CoS) emailed the II MEF SJA and asked whether the CDA had any concerns “IRT [in regards to] Major Conway getting promoted on 1 June.” The email prompted the II MEF SJA to email the SJA for the CDA at 9:38 a.m., and ask whether the CDA had any concerns regarding Maj Conway’s promotion. At 9:54 a.m., the CDA SJA responded by email: “The CDA does not have an issue with Major Conway’s promotion going forward.”

Afternoon

Maj Gen Angela Salinas, USMC, the Director, USMC Manpower Management Division, testified that Maj Gen Toolan called her on the afternoon of May 31, 2012, and asked her if he could promote Major Conway on June 1, 2012. Maj Gen Salinas stated Maj Gen Toolan was especially concerned because he believed Gen Conway was coming to Camp Lejeune, North Carolina, for the promotion ceremony. Maj Gen Salinas added that, unaware of the circumstances surrounding the matter, she referred Maj Gen Toolan to Maj Gen Vaughn Ary, the Commandant’s SJA. She testified that Maj Gen Salinas called her shortly after her call with Maj Gen Toolan, and told her that 2nd MAR DIV should have put Maj Conway on legal hold in order to delay the promotion. She added Maj Gen Ary told her that he needed to confer with Gen Amos.

Maj Gen Ary testified that he conferred with Gen Amos regarding the matter, then called Maj Gen Salinas and told her that their respective offices should initiate the promotion delay process pending further clarification. Maj Gen Ary testified Gen Amos told him that he did not care that Maj Conway was the former Commandant’s son and that he (Gen Amos) would not promote him unless Lt Gen Paxton first cleared him.

**15** Lt Gen Mills testified that he did not have any objection to Maj Conway’s promotion on June 1, 2012.
Gen Amos provided the following description of his reaction when he learned that Maj Conway was scheduled to be promoted on June 1, 2012:

I was livid. I made it very clear to MajGen Toolan, who was the division commander who owned the regiment who owned V32 [3/2 Marines]. And I made it very clear to Gen Paxton that I was not happy, because I didn’t have that [written recommendation regarding the 3/2 hold issue]. I didn’t have that and you have not come back to me. And you’ve got no authority to promote Brandon Conway until I have given you the authority.\(^\text{16}\)

MajGen Salinas testified she believed MajGen Ary “took a face shot” from Gen Amos when he (Gen Amos) learned about Maj Conway’s scheduled promotion, because no one had followed up on Gen Amos’ hold direction. MajGen Salinas testified that after her discussion with MajGen Ary, she gave her promotion branch (MMPR) personnel a “heads up” of what may be happening with respect to the delay of Maj Conway’s promotion.

At 2:29 p.m., May 31, 2012, a MMPR staff officer emailed a counterpart in JAM to request initiation of a promotion delay for Maj Conway “by direction of the Commandant of the Marine Corps.” At 2:34 p.m., the MMPR staff officer informed the 2nd MARDIV, via email, the “Commandant of the Marine Corps has delayed the promotion” of Maj Conway.

**Gen James Conway’s Telephone Call**

\(^{16}\) LtGen Paxton also testified that Gen Amos was unhappy when he learned of Maj Conway’s scheduled promotion.
Late Afternoon - Evening

MajGen Ary testified that, after MMPR notified 2nd MARDIV to delay Maj Conway’s promotion, he evaluated whether grounds existed to support delay of the promotion. MajGen Ary added that his evaluation of the proposed promotion delay became necessary because SECNAV had to approve any promotion delay. He stated that his staff contacted the CDA SJA and confirmed that the CDA had no intent of pursuing disciplinary or other action against Maj Conway. MajGen Ary testified that upon learning the CDA’s intent, he determined that there was not sufficient reason or authority to delay Maj Conway’s promotion.19

MajGen Ary stated he shared his conclusion with Gen Amos. MajGen Ary added that after Gen Amos spoke with LtGen Paxton by telephone, LtGen Paxton told MajGen Ary, “O.K., we will not delay.” In retrospect, MajGen Ary described the processing and management of the 3/2 hold issues as confused and as an example of “bureaucratic inefficiency of communications.”

On May 31, 2012, at 4:44 p.m., MMPR emailed 2nd MARDIV and instructed them to disregard the previous message concerning delay of Maj Conway’s promotion. Additionally, an internal MMPR email sent at 4:53 p.m., directed the responsible MMPR officials to promote Maj Conway to lieutenant colonel on June 1, 2012.

On May 31, 2012, at 8:56 p.m., LtGen Paxton emailed a written “disposition memorandum” to Gen Amos, setting out his proposed recommendations regarding the hold status of 3/2 Marines.20 LtGen Paxton’s disposition memorandum categorized three groups of 3/2 Marines related to or affected by the urination incident: (1) the nine Marines facing disciplinary action, (2) six Marines in leadership positions, and (3) all remaining 3/2 Marines and Sailors. The memorandum requested Gen Amos’ approval of the following specific recommendations:

- Place the nine Marines facing disciplinary action on “legal/admin hold”;

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18 Mr. Hogue testified that he was aware LtGen Paxton owed Gen Amos written recommendations regarding the 3/2 Marine hold issue and believed that LtGen Paxton’s completion of the tasking was overdue.

19 Late on the afternoon of May 31, 2012, Major General (MajGen) Ary and MajGen Toolan each called MajGen Salinas back and told her that delaying Maj Conway’s promotion was no longer the plan.

20 Evidence established that the first draft of LtGen Paxton’s disposition memorandum was dated May 29, 2012.
• Place the 3/2 Commander and Command Sergeant Major, along with the Kilo Company Commander and First Sergeant, on "legal/admin hold" pending the outcome of the disciplinary actions against the nine Marines; and
• Release Maj Conway and the 81 MM Platoon Commander (a Marine first lieutenant) from their hold status.

LtGen Paxton also recommended Gen Amos authorize him to conduct a final review for all remaining 3/2 Marines before any of them were released from hold. His expectation was that release from hold status would occur after this final review.21

LtGen Paxton offered the following logic for his recommendation to remove Maj Conway and the 81MM Platoon Commander from hold:

There are neither facts, evidence, nor opinions that these two officers were aware of the urination incident nor the photography of it. In addition, the scope of their responsibilities, geographic location and battlefield circulation did not put them in contact with or have influence over the Scout Sniper Team.

In his email with the attached disposition memorandum, LtGen Paxton apologized to Gen Amos for creating an appearance that he (LtGen Paxton) made hold-related decisions, including a decision affecting Maj Conway’s promotion, before delivering the required written recommendations to Gen Amos. LtGen Paxton wrote:

I regret, and take responsibility for any/all changes that appeared to have occurred in the past 96 hours. I can only attribute it to the thought that some may have thought this email and attachment had already been transmitted by me to you. The release of the tentative promotion for June last Thursday before the long weekend, and the requirement to advise SecNav of any withholds further complicated the issue. In no way was there ever intent to deviate from your guidance or present a fait accompli on any individual or case.

LtGen Paxton testified that he considered Maj Conway’s pending June 1 promotion as a “fish or cut bait” moment. He added he used the early May EOS, Maj Conway’s promotion deadline, and his May 31, 2012, disposition memorandum to Gen Amos as tools to advance his broader agenda to reduce the total number of 3/2 Marines on a hold status. LtGen Paxton stated he viewed the disposition memorandum as the culmination of a more than 3-month effort to reduce the number of 3/2 Marines on hold rather than a means to ensure Maj Conway’s promotion to lieutenant colonel. LtGen Paxton added that without Gen Amos’ requirement for

21 Gen Amos approved LtGen Paxton’s recommendations, and on June 6, 2012. LtGen Paxton released from hold the remaining 3/2 Marines not expressly covered by the May 31 disposition memorandum.
comprehensive written recommendations relating to hold decisions for all 3/2 Marines, he would not have prepared the May 31 disposition memorandum.

Friday, June 1, 2012

On June 1, 2012, Gen Amos approved LtGen Paxton’s disposition memorandum by initialing “CMC aware” regarding the nine 3/2 Marines subject to disciplinary action, and “CMC approval” concerning LtGen Paxton’s other recommendations, including the release from hold of Maj Conway and the 81 MM Platoon Commander.22

Gen Amos testified that nothing other than the facts and recommendations contained in the disposition memorandum convinced him to approve the removal of Maj Conway from his hold status. Gen Amos stated:

And when [the disposition memorandum] came in that way, I looked at it and I said, “Okay. I’ve done due diligence.” Again, as the owner of the process, I’ve done the due diligence - it wasn’t due diligence just to get it done with so I can make [General] Conway happy. To this day, General Conway and I have never spoken a word about it. Not a word. And I’ve been in many, many functions with him. Both he and his wife. I was at a function with him last Friday night. They have never said a word to me about it.

Gen Amos also explained the differences between his decisions concerning the 3/2 battalion commander and the 3/2 XO. He stated that a commander can delegate authority or responsibility, but can never delegate accountability. He added that a commander’s accountability is “sacred ground” in the USMC and has been “forever.” Gen Amos testified:

So, what happened in 3/2, at the end of the day it was [the Commander’s] battalion. It wasn’t [the XO’s] battalion. He was the XO, and I’ve been an XO five times, so I know what they do. It was [the Commander’s]. Had [Maj Conway] been stationed alongside of [the CO] 24 hours a day, 7 days a week, and they were all wherever [the CO’s] headquarters were, maybe [the XO] would have known more. But had he known, and had [the XO] been there with him, then that would have been a different story. But Brandon [Maj Conway] was in Busa Kala, and I know that for a fact because I flew in there to visit him. Completely disassociated by probably 70-80 miles. Maybe 100 miles. Two different parts of the battle space. Took the command element and broke it up. Similar missions, but absolutely different parts of the
Helmand Province. So, at the end of the day [the Commander] is accountable for everything that takes place.

LtGen Paxton provided an explanation of his recommendation to remove the hold on Maj Conway, while keeping holds in place for 3/2 Commander, the Kilo Company Commander, and the respective 3/2 senior noncommissioned officers. LtGen Paxton testified:

In this case, there is a very subtle but key difference, too, because in [Maj Conway's] case, he is the XO. He is not the commander, and there is just a big difference. I mean, because the commander is the one who is ultimately responsible.

Discussion

We conclude Gen Amos did not afford preferential treatment to Maj Conway.

We found that immediately after the urination video surfaced and the perpetrators were identified, Gen Amos directed that all 3/2 Marines, including Maj Conway, remain on hold until the CDA made a determination regarding culpability. We also found that Gen Amos directed the hold status to cover all personnel moves, promotions, awards, and departures from the USMC. We further found Gen Amos told LtGen Paxton that he could not remove any 3/2 Marines from hold until he (LtGen Paxton) provided Gen Amos with a written recommendation recommending removal from hold.

We found that neither Gen Amos, nor the II MEF chain of command, nor JAM took any action to list Maj Conway on the ODN or initiate the formal legal hold process required by governing regulations to delay Maj Conway’s promotion to lieutenant colonel. We found that Maj Conway was never on formal legal hold. We also found that the USMC did not place any 3/2 officer on the ODN prior to June 1, 2012.

We found that on May 31, 2012, following MajGen Ary’s discussion with Gen Amos about Maj Conway’s pending June 1 promotion, the II MEF chain of command undertook steps to delay Maj Conway’s promotion. We found that Maj Conway informed his parents on May 31 that his promotion was “not going to happen.” We further found that Gen Conway telephoned Mr. Hogue and asked about the hold process affecting his son’s promotion. However, neither Gen Conway nor Mr. Hogue told Gen Amos or any other USMC leader of the call until after Maj Conway’s promotion. We also found that MajGen Ary determined there were insufficient bases to submit a hold request for Maj Conway to SECNAV.

We found that Gen Amos approved LtGen Paxton’s recommendation to remove Maj Conway from hold on June 1, 2012. We further found that Maj Conway was promoted to lieutenant colonel effective 12:01 a.m., on Friday, June 1, 2012, because the USMC delivered no documentation to SECNAV by which formal action to delay the promotion could be taken.

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Federal law, along with Navy and USMC regulations, establishes a process to delay a USMC officer's promotion. Additionally, the JER and USMC regulations require leaders to make personnel decisions without affording preferential treatment to any person.

We determined that Gen Amos did not authorize Maj Conway's removal from hold based on Maj Conway's relation to Gen Conway, the former Commandant. We determined Gen Amos' decision to approve LtGen Paxton's recommendation regarding removal of Maj Conway from hold was reasonable. We also determined that given the absence of any formalized action to delay Maj Conway's promotion before June 1, 2012, his promotion to lieutenant colonel was effective on June 1, 2012.

We also determined that neither the CDA nor the II MEF chains of command took action to place any of the 3/2 officers on formal legal hold prior to June 1, 2012. Although Gen Amos' directive to place 3/2 Marines on hold was clear, we found no evidence that any steps were taken to place Maj Conway or the other 3/2 officers on hold. We determined that these deficiencies led to confusing and inconsistent decisions and messages between May 25 and May 31, 2012, regarding Maj Conway's scheduled promotion. As a result, Gen Amos did not approve LtGen Paxton's recommendation to release Maj Conway from hold until June 1, 2012, the effective date of Maj Conway's promotion to lieutenant colonel. Finally, we determined Gen Amos did not approve LtGen Paxton's recommendation to release Maj Conway from hold because of any relationship Gen Amos may have had with Gen Conway.

Based on the foregoing, we conclude that Gen Amos did not afford Maj Conway preferential treatment.

V. CONCLUSION

We conclude Gen Amos did not afford Maj Conway preferential treatment.

VI. OTHER MATTERS

A December 20, 2011, MARADMIN announced the FY13 USMC Colonel Promotion Selection Board's selection of 130 Marine officers for promotion to colonel, including LtCol Christopher Dixon, USMC, the 3/2 Battalion Commander. A January 28, 2013, MARADMIN announced LtCol Dixon's promotion to colonel, with an effective date of February 1, 2013.

On February 6, 2013, the Commander, 2nd MARDIV notified LtCol Dixon in writing that his promotion to colonel was delayed pending the conclusion of all disciplinary and administrative proceedings involving 3/2 Marines.23 On February 8, 2013, LtCol Dixon acknowledged receipt of the February 6 notification and stated, "I desire to submit matters to the

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23 As we noted earlier in this report, Federal Statute and applicable USMC regulations include the requirement for written notice of the grounds for a promotion delay and an opportunity to respond before the effective date of the promotion, unless it is impracticable to do so.
Commandant of the Marine Corps after the completion of all disciplinary and administrative proceedings involving Marines from my command."

We found no evidence that the USMC listed LtCol Dixon on the ODN at any time prior to February 1, 2013, the effective date of his promotion to colonel. Moreover, witnesses testified that the USMC did not submit any documentation to SECNAV to request approval of the promotion delay for LtCol Dixon before the effective date of his promotion.

By correspondence dated October 18, 2013, Gen Amos notified LtCol Dixon that the basis for LtCol Dixon's promotion delay “is now complete,” and LtCol Dixon’s promotion to colonel is pending determination by the Secretary of the Navy.25 The correspondence notified LtCol Dixon that he is afforded the opportunity to submit matters on his behalf, and requires submission of any matters through his chain of command to the Commandant, USMC, within 10 days of receipt of the correspondence.

LtCol Dixon acknowledged receipt on October 21, 2013, of Gen Amos’ correspondence and stated he desired to submit matters to the Commandant, USMC.

VII. RECOMMENDATIONS

A. We make no recommendation with respect to Gen Amos.

B. We recommend that SECNAV review the action taken to delay LtCol Dixon's promotion to colonel to determine whether appropriate steps were taken to delay his promotion or, alternatively, whether LtCol Dixon was promoted by operation of law on February 1, 2013.

C. If SECNAV determines LtCol Dixon was promoted by operation of law on February 1, 2013, we recommend that SECNAV take appropriate action to correct LtCol Dixon’s records.

25 Gen Amos’ October 18, 2013, correspondence to Lieutenant Colonel Dixon is signed by “B.A. Robles, By Direction.”